

For:

Introduction: 8/5/19

PC review/recommendation: N/A

Public Hearing N/A

Adoption _____

THE TOWN OF MOUNT AIRY, MARYLAND

ORDINANCE NO. 2019-8

**AN ORDINANCE TO AMEND PART II
OF THE CODE OF THE TOWN OF MOUNT AIRY
ENTITLED "GENERAL LEGISLATION",
CHAPTER 79 ENTITLED "OPEN BURNING", SECTION 79-1 ENTITLED "OPEN
FIRE RESTRICTIONS", SECTION 79-2 ENTITLED "VIOLATIONS AND
PENALTIES", AND CREATING NEW SECTIONS 79-3 ENTITLED "RESTRICTION
ON FIRES ON PRIVATE PROPERTY", SECTION 79-4 ENTITLED "TEMPORARY
RESTRICTIONS", SECTION 79-5 ENTITLED "VIOLATIONS AND PENALTIES"**

WHEREAS, the Town Council has determined that greater clarity and specificity is needed with respect to the restrictions on open burning as set forth in Chapter 79 of the Town Code, and specifically with respect to what is and is not prohibited, and with respect to the exceptions from the Chapter.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE TOWN
OF MOUNT AIRY:**

Section 1. That Part II, Chapter 79 to the Town Code, Section 79-1 of the Code be and is hereby repealed and reenacted with amendments as follows:

Chapter 79

OPEN OUTDOOR BURNING

§79-1. ~~Open fire restrictions~~ Definitions.

~~It shall be unlawful for any person to cause or permit an open fire out of doors within the limits of the Town of Mount Airy whenever the same is in violation of any state statute or regulations.~~

The following words and phrases, when used in this chapter, shall have the meaning ascribed to them in this section, except where the context clearly indicates or requires a different or contrary meaning:

MATERIAL – Any tangible object, to include vegetation, debris, waste, trash, wood, scrap lumber, charcoal or combustibles, other than prohibited materials as defined below.

OUTDOOR BURNING – Any fire, flame, combustion, smoldering, or consumption of material or prohibited material by fire, flame or heat on the ground or in an open receptacle, other than a furnace or incinerator or other equipment connected to a stack or chimney, that takes place in a space that is not indoors.

PERSON - Any natural person or persons, partnership, association, corporation, firm, fictitious name or any other individual or business entity or their agents.

PROHIBITED MATERIALS - Municipal waste material, recyclable material, or solid waste, as regulated by local, state, or federal solid waste management and recycling control procedures, hazardous waste materials, materials such as tires or roofing material likely to cause dense smoke or foul odor when burned, or other materials reasonably likely to create a nuisance to neighboring property or to cause injury to human, plant or animal life or to property, or which is reasonably likely to adversely impact air quality or the environment.

RECREATIONAL/CEREMONIAL FIRES - Any fire held on private property when contained in man-made brick or stone fire pits or other commercially made chimineas, fireplaces, fire rings, etc., which are customarily associated with outdoor living and patio areas and which are modest in size and are being utilized for the purposes of ceremony or recreation and not merely for burning or disposal of prohibited materials.

Section 2. That Part II, Chapter 79 to the Town Code, Section 79-2 of the Code be and is hereby repealed and reenacted with amendments as follows:

§79-2. Violations and penalties Outdoor burning prohibited on public property; exceptions.

~~Violation of any of the provisions of this chapter is hereby declared to be a municipal infraction.~~

No person shall set, cause to be set, maintained in or permit to be maintained any outdoor burning of any kind, including not limited to the outdoor burning of any prohibited material, upon any of the streets, sidewalks, alleys, or public grounds in the Town of Mount Airy, unless specifically authorized by the Town Council or its appointed agent, or, in the case of the town parks, in appliances designed for the preparation of food.

Section 3. That Part II, Chapter 79 to the Town Code be and is hereby amended to add new Section 79-3 of the Code as follows:

§79-3. Restrictions on outdoor burning on private property.

Except as set forth in subsection H below, no person shall cause or permit to be caused any outdoor burning of any kind, including the burning of prohibited material, upon any private property in the Town, except under the following conditions:

- A. No outdoor burning of any prohibited materials shall be permitted.

- B. No outdoor burning shall be permitted within 50 feet of any building, whether or not owned by any person setting the fire and whether or not occupied, nor within 40 feet of any property line, except in recreational/ceremonial fires and fires set solely for cooking.
- C. Recreational/ceremonial fires and outdoor burning of material in fireplaces, outdoor wood fired furnaces or boilers, noncombustible containers or incinerators, or appliances designed to prepare foods and oil or gas fired salamanders or similar devices designed for outdoor heating or warming and that do not emit strong odors, particulate matter, vapors or gases are permitted subject to the following restrictions:
- (1) Any open flame is kept a minimum twenty feet from any building or other structure;
 - (2) The other restrictions contained in this section are followed;
 - (3) All other applicable federal, state and county laws or regulations are followed; and
 - (4) All applicable instructions of the manufacturer of any chiminea, fire ring, fireplace, furnace or boiler, noncombustible container or incinerator, or appliance used to contain the fire or outdoor burning are followed.
- D. Any flame from outdoor burning shall be moderate in size and shall not present a danger to surrounding vegetation or structures so as to present an imminent danger of spreading beyond materials that are permitted to be consumed.
- E. All outdoor burning shall be maintained and kept under the supervision of an adult person within reasonable proximity at all times.
- F. All outdoor burning must be entirely extinguished and not permitted to burn or smolder when left unattended by an adult person.
- G. No outdoor burning may create a nuisance to neighboring property or any safety hazard to neighboring property or the property on which the outdoor burning takes place, or which causes dense smoke or foul odor, or which is a danger to human, plant or animal life or to property, or which is a danger to air quality or the environment.
- H. The requirements of this Section do not apply where the open burning does not create a nuisance or safety hazard, about which the Town Code Enforcement Officer and local Fire Marshal are notified and have approved, and which results from:
- (1) A fire set to prevent or abate a fire hazard, when approved by the Maryland Department of the Environment (MDE), or other appropriate state or federal agency, and set by or under the supervision of a public officer.
 - (2) Any fire set for the purpose of instructing personnel in firefighting when approved by the DEP or other appropriate state or federal agency.

(3) Outdoor burning used to clear land, provided that the proper authorities are notified of the controlled burn and have approved same.

Section 4. That Part II, Chapter to the Town Code be and is hereby amended to add new Section 79-4 of the Code as follows:

§79-4. Temporary restrictions.

The Town Council, by resolution, when it is deemed to be in the interest of public health and safety, may impose a temporary partial or full ban on burning, including but not limited to the following: open burning, burning in receptacles, campfires, charcoal grills, exterior fireplaces, agricultural purposes and for the purpose of clearing land. Such a ban shall be reviewed from time to time and lifted when the condition(s) resulting in the imposing of the ban no longer exist. In addition, the Town Council, by resolution, may delegate to the Town Administrator the authority to impose a temporary partial or full ban on burning, as well as the lifting thereof, based upon the criteria and under the circumstances set forth herein. The imposition by the Town Administrator of a partial or full ban on burning, as well as the lifting thereof, is to be ratified and confirmed by the Town Council, by resolution, at the next regularly scheduled meeting of the Town Council following the action taken by the Town Fire Chief or Town Administrator.

Section 5. That Part II, Chapter to the Town Code be and is hereby amended to add new Section 79-5 of the Code as follows:

§79-5. Violations and penalties.

Violation of any of the provisions of this Chapter is hereby declared to be a municipal infraction. The fine shall be \$50 for the first offense and \$100 for each subsequent offense occurring within six months of the last offense.

BE IT ENACTED AND ORDAINED BY THE AUTHORITY AFORESAID, that
this Ordinance shall take effect on the ____ day of _____, 2019.

Introduced this 5th day of August, 2019.

Enacted this ____ day of _____, 2019 by a vote of ____ in favor and ____ opposed.

ATTEST:

Jason Poirier, Secretary

Larry Hushour, President of the Town Council

Approved this ____ day of _____, 2019.

ATTEST:

Jason Poirier, Secretary

Patrick T. Rockinberg, Mayor

REVIEWED AND APPROVED AS TO LEGAL FORM AND SUFFICIENCY.
This _____ day of _____, 2019.

Thomas V. McCarron, Town Attorney

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